

STATE OF MICHIGAN
COURT OF APPEALS

In re OSBORN/EDMONDS, Minors.

UNPUBLISHED
December 15, 2015

No. 327123
Clare Circuit Court
Family Division
LC No. 13-000066-NA

Before: SAAD, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Respondent mother appeals the April 8, 2015 circuit court order terminating her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. BACKGROUND

On June 19, 2013, the Department of Health and Human Services (DHHS) filed a petition requesting court jurisdiction and removal of respondent's two minor children, RO and HE. Preceding the filing of the petition were multiple positive drug screens by respondent, HE being born testing positive for opiates, HE being left in the care of relatives for prolonged periods, and respondent's arrest for three counts of delivery of a controlled substance and for maintaining a drug house. On the day of her arrest, respondent tested positive for Amphetamine, Methamphetamine, Hydrocodone, and Methadone. Respondent was incarcerated shortly after the preliminary hearing on June 20, 2013, and remained incarcerated until March 2014 when she was released on probation. A parent agency treatment plan (PATP) signed by respondent was drafted in August 2013 and submitted to the court without objection in September 2013. Updated PATPs followed, but respondent's barriers to reunification remained the same: substance abuse, housing, and employment. The DHHS supplied respondent with services to rectify each of the barriers. From March 2014 to December 2014 respondent participated in services only slightly before admitting herself into a 30-day residential treatment program. Once she was released from the program however, she did not resume any services and would not randomly drug screen for the DHHS. The DHHS filed a supplemental petition for permanent wardship requesting termination of parental rights on January 23, 2015. The termination hearing was held on April 8, 2015. Respondent did not appear. The court terminated respondent's parental rights after having found that the barriers to reunification, despite services to respondent, continued to exist, that respondent failed to provide proper care and custody to RO and HE, and that there would be a reasonable likelihood of harm to the children if the court were to return them to respondent's care.

II. STANDARD OF REVIEW

“To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “The time for asserting the need for accommodation in services is when the court adopts a service plan...” *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). Respondent did not object to petitioner’s reasonable efforts or the reunification services she received at any time while in the circuit court. “Review of an unpreserved error is limited to determining whether a plain error occurred that affected substantial rights.” *Rivette v Rose–Molina*, 278 Mich.App 327, 328; 750 NW2d 603 (2008). “To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

“In general, when a child is removed from the parent’s custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005), citing MCL 712A.18f(1), (2), and (4). However, “[w]hile the DH[H]S has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

III. ANALYSIS

Respondent’s sole argument in challenging the trial court’s findings regarding statutory grounds for termination is that petitioner did not make reasonable efforts to reunite her with her children. The record evidences the opposite however, and instead illustrates that respondent was offered services to alleviate issues of substance abuse, housing, and employment, but failed to comply with or benefit from those services.

Respondent’s argument in response to the substance abuse services she received is not that the services were inadequate, but that she should have been given more time to comply with the PATP. Respondent had a protracted history with substance abuse that included a child born suffering from opiate withdrawal and drug-related criminal convictions. At the time of the original petition for temporary wardship, respondent was screening with the DHHS and testing positive for multiple illegal substances, leaving her children with family members for days at a time and not returning when planned to pick them up, and was arrested on felony drug charges. To combat this issue, the DHHS offered respondent substance abuse rehabilitative treatment, group and individual counseling, and random drug screening. Respondent was referred to CMH upon her release from jail in March 2014. We acknowledge that there were initial insurance issues that prevented respondent from being admitted into a 1016 program, but respondent further stalled services by denying that she had a substance abuse problem at her CMH assessment in July 2014. As a result, respondent did not enter a rehabilitative program until December 2014, nearly nine months after her release from jail. The DHHS offered respondent counseling services as a therapeutic component to her rehabilitation. Before entering the 1016 residential recovery program, respondent appeared for only four of the ten individual counseling sessions scheduled with Dr. Chung and to only one or two group therapy sessions. After her

completion of 1016, respondent did not attend any counseling sessions. The DHHS also offered random drug screens to address respondent's substance abuse. Respondent tested positive for substances 15 out of the 19 times she randomly screened. When questioned about the positive screens, respondent denied use and claimed ignorance as to how she could have tested positive. Once respondent was released from jail, she was given a year to comply with the treatment plan. RO and HE waited in care a total of 21 months. At the time of the termination hearing, respondent had not screened for the DHHS in over three months and was in violation of her probation for failure to randomly screen. Respondent was offered services, but did not benefit. Additional time to work on the PATP would not have brought respondent into any further compliance.

Respondent next argues that the assistance she received to address her lack of housing was insufficient because it did not include financial assistance. The DHHS offered respondent parent aide Bohr to assist in obtaining adequate housing. We conclude that this service alone was sufficient to address respondent's lack of housing. Bohr was assigned to respondent in early 2014 and was available to help look for housing on a weekly basis. Respondent only met with Bohr six times and missed 16 scheduled meetings. Respondent repeatedly told Bohr that she already obtained housing. Thus, she forfeited the housing aide that was available.

Respondent last argues that she was given no assistance whatsoever with finding employment. Respondent was provided a service to assist with lack of employment; again, it was Bohr, the parent aide. Bohr testified that she and respondent worked on housing and employment in tandem, realizing that one was necessary for the stability of the other. Once more, Bohr was available weekly, but respondent only met with her six times. Again, like respondent's claim that she had housing, respondent also claimed that she was employed providing homecare or was on the brink of employment. Respondent was uncooperative and told Bohr she was not open to other possibilities of employment. Similar to the issue of housing, because respondent met with Bohr only six times and was resistant to services, it is unknown what other assistance and referrals Bohr had to offer.

Respondent has failed to demonstrate plain error affecting her substantial rights. Respondent was warned as early as the adjudication hearing that failure to comply with the PATP would result in a change of the permanency planning goal from reunification to termination. She was also told to address any concerns regarding the PATP with her attorney and the worker. Respondent did not raise any concerns to the court and stated she had no objection to the services offered on multiple occasions. "This Court has held that a parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); MCL 712A.19b(3)(g). At the time of the termination hearing, RO and HE were approaching 22 months in care. When a child has been in care "for 15 of the most recent 22 months, the court shall order the agency to initiate proceedings to terminate parental rights." MCL 712A.19a(6). At the time of termination, respondent was still without housing, still without employment, and had not randomly screened for the three months prior. The services provided were sufficient to overcome those barriers.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Colleen A. O'Brien